

HOUSE No. 957

By Mr. Hynes of Marshfield, petition of Frank M. Hynes for legislation to amend drunk driving penalties. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT TO AMEND DRUNK DRIVING PENALTIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 90, Section 24, subparagraph (1) of para-
2 graph (a) of subdivision (1), as appearing in the 2002 Official Edi-
3 tion, is hereby amended by inserting after the seventh paragraph
4 the following new paragraph:—

5 Notwithstanding any other provision of this section, any person
6 convicted of a violation of this subparagraph in addition to any
7 sentence imposed by any other provision of law, be required to
8 submit to and cooperate with an alcohol or controlled substance
9 evaluation, the scope of which shall be determined by the depart-
10 ment of public health, who shall have the authority to promulgate
11 such regulations as are necessary to comply with the provisions of
12 this paragraph. The regulations shall require an assessment of the
13 nature, frequency, and quantity of substance abuse, behavioral
14 modifications of the person's abuse, the likelihood of recidivism,
15 and specific recommendations to reduce the likelihood of recidi-
16 vism, and shall include a requirement that the assessment be done
17 by a clinician qualified to make such an assessment. Such clini-
18 cian shall have access to all court, police, criminal history, and
19 registry of motor vehicles records required to make such an
20 assessment. Upon the assessment being made, the court shall have
21 the authority to accept the recommendations in whole or in part,
22 and to make such order for treatment as it deems necessary. The
23 costs of this assessment and treatment shall be paid by the defen-
24 dant; provided, that no person may be excused from the provi-
25 sions of this paragraph for inability to pay said costs. The court

26 may waive such costs after such person files an affidavit of indi-
27 gence or inability to pay and the probation officer investigates and
28 confirms such indigence or establishes that the payment of such
29 costs would cause a grave and serious hardship to such individual
30 or to the family thereof, provided, that the court shall enter a
31 written finding supporting why such costs were waived. In no case
32 shall such a determination be made by the court less than 10 days
33 after the filing of the affidavit of indigence or the disposition of
34 the case, whichever is later, in order that the probation officer may
35 properly investigate the information contained therein. Should the
36 individual cease to be indigent during the period of probation, if
37 any, the probation officer shall so notify the court who shall assess
38 the costs. In lieu of waiver of the entire amount of said costs, the
39 court may direct such individual to make partial or installment
40 payments of such costs when appropriate. Failure to cooperate
41 with the assessment shall constitute a violation of the terms and
42 conditions of probation. Failure to pay the costs required under
43 this paragraph shall, unless excused pursuant to the provisions
44 above, constitute a violation of the terms and conditions of proba-
45 tion.

1 SECTION 2. Subsection (4) (c) (1) of section 24, of said
2 chapter of the General Laws, as appearing in the 2002 Official
3 Edition, is hereby amended by striking out, in line 324, the word
4 “one ” and inserting in place the word: “two.”

1 SECTION 3. Subsection (4) (c) (2) of section 24, of said
2 chapter of the General Laws, as appearing in the 2002 Official
3 Edition, is hereby amended by striking out, in line 350, the word
4 “two” and inserting in place the word: “four.”

1 SECTION 4. Said subsection (4) (c) (1), of said section 24, as
2 so appearing, is hereby further amended by striking out in line 325
3 the word “three” and inserting in place thereof the following
4 word: “twelve.”

1 SECTION 5. Said subsection (4) (c) (2) of said section 24, as
2 so appearing, is hereby the further amended by striking out in line

3 363 the words “one year” and inserting in place thereof the
4 following words: “ two years.”

1 SECTION 6. Chapter 90 of the General Laws is hereby
2 amended by inserting after section 24P the following new
3 section:—

4 Section 24Q. (a)(1) The motor vehicle(s) of any person con-
5 victed of a violation of paragraph (a) of subdivision (1) of section
6 24 of this chapter, may be forfeited to the commonwealth. Failure
7 of the complaints of such convictions to note such subsequent vio-
8 lations shall not be a defense to these proceedings. A district
9 attorney or the attorney general may petition the superior or dis-
10 trict court in the name of the commonwealth in the nature of a
11 proceeding in rem to order forfeiture of such motor vehicle(s).
12 Such petition shall be filed in the court having jurisdiction over
13 the criminal proceeding brought under section 24 of this chapter.
14 Such proceeding shall be deemed a civil suit in equity. In all such
15 suits where the motor vehicle is claimed by any of the following
16 family members living in the defendant’s household: parent,
17 spouse, child, grandparent, brother, sister, or parent of the spouse,
18 the commonwealth shall have the burden of proving to the court
19 the existence of probable cause to institute the action, and any
20 such claimant shall have the burden of proving that the property is
21 not forfeitable pursuant to paragraph (7) of this subsection. The
22 court shall order the commonwealth to give notice by certified or
23 registered mail to the owner or owners of said motor vehicle(s)
24 and to such other persons or entities who appear to have an
25 interest therein, and the court shall promptly, but not less than two
26 weeks after notice, hold a hearing on the petition. Upon the
27 motion of an owner of said motor vehicle, the court may continue
28 the hearing on the petition pending the outcome of any criminal
29 trial related to a violation of section 24, of this chapter. At such
30 hearing the court shall hear evidence and make findings of fact
31 and conclusions of law, and shall thereon issue a final order and
32 the parties shall have such right of appeal as from a decree in
33 equity. In all such suits where a final order results in forfeiture,
34 said final order shall provide for disposition of said motor vehicle
35 by the commonwealth or any subdivision thereof in any manner
36 not prohibited by law, including official use by an authorized law

37 enforcement or other agency, or at sale at public auction or by
38 competitive bidding. The proceeds of any such sale shall be used
39 to pay the reasonable expenses of the forfeiture proceedings,
40 seizure, storage, maintenance of custody, advertising, and notice,
41 and the balance thereof shall be distributed as further provided in
42 this section.

43 (2) The final order of the court shall provide that said monies
44 and the proceeds of any such sale shall be distributed equally
45 between the prosecuting district attorney or attorney general, the
46 city, town, or state police involved in the seizure, and the chief
47 probation officer of the court. Such fees paid to the chief proba-
48 tion officer shall be deposited with the state treasurer, subject to
49 appropriation for the support of programs for the apprehension of
50 impaired drivers, and treatment and rehabilitation of those charged
51 with operating under the influence; provided however, that any
52 money so collected and deposited may be expended by the secre-
53 tary of public safety for the purposes herein stated; provided fur-
54 ther, however, that any remaining balance at the end of a fiscal
55 year shall not revert to the General Fund, and shall remain avail-
56 able to the secretary for the purposes provided herein.

57 (3) There shall be established within the office of the state trea-
58 surer separate special law enforcement trust funds for each district
59 attorney and for the attorney general. All such monies and pro-
60 ceeds received by any prosecuting district attorney or attorney
61 general shall be deposited in such a trust fund and then shall be
62 expended without further appropriation to defray the costs of pro-
63 tracted investigations, to provide additional technical equipment
64 or expertise, to provide matching funds to obtain federal grants, or
65 such other law enforcement purposes as the district attorney or
66 attorney general deems appropriate. The district attorney or
67 attorney general may expend up to ten percent of monies and pro-
68 ceeds for alcohol or controlled substance rehabilitation, education
69 and treatment programs. Any program seeking to be an eligible
70 recipient of said funds shall file an annual audit report with the
71 local district attorney and attorney general, which shall include,
72 but not be limited to, a listing of the assets, liabilities, itemized
73 expenditures, and board of directors of such program. Within 90
74 days of the close of the fiscal year, each district attorney and the
75 attorney general shall file an annual report with the house and

76 senate committees on ways and means on the use of the monies in
77 the trust fund for the purposes of alcohol education, treatment or
78 rehabilitation programs.

79 (4) All such monies and proceeds received by any police
80 department shall be deposited in a special law enforcement trust
81 fund and shall be expended without further appropriation to
82 defray the costs of protracted investigations, to provide additional
83 technical equipment or expertise, to provide matching funds to
84 obtain federal grants, or to accomplish such other law enforce-
85 ment purposes as the chief of police of such city or town, or the
86 commissioner of public safety deems appropriate, but such funds
87 shall not be considered a source of revenue to meet the operating
88 needs of such department.

89 (5) Any officer, department, or agency having custody of any
90 property subject to forfeiture under this chapter or having dis-
91 posed of said property shall keep and maintain full and complete
92 records showing from whom it received said property, under what
93 authority it held or received or disposed of said property, and an
94 exact description of said property. Said records shall be open to
95 inspection by all officers charged with enforcement under this
96 section. Persons making final disposition of said property under
97 court order shall report, under oath, to the court the exact circum-
98 stances of said disposition.

99 (6) During the pendency of the proceedings the court may issue
100 at the request of the commonwealth ex parte any preliminary
101 order or process as is necessary to seize or secure the property for
102 which forfeiture is sought and to provide for its custody. Process
103 for seizure of said property shall issue only upon a showing of
104 probable cause, and the application therefor and the issuance, exe-
105 cution and return thereof shall be subject to the provisions of
106 chapter 276 so far as applicable.

107 (7) In any forfeiture proceeding the court shall not allow the
108 claim of any claimant for return of the motor vehicle unless such
109 claimant shows, to the satisfaction of the court, that the claimant
110 is dependent on the motor vehicle for his or her livelihood or the
111 maintenance of his or her family.

112 (8) No forfeiture under this section shall extinguish a perfected
113 security interest held by a creditor in the motor vehicle(s) at the
114 time of the filing of the forfeiture action. (b)(1) The court shall

115 order that all motor vehicles of a person convicted of a violation
116 of paragraph (a) of subdivision (1) of section 24 of this chapter,
117 that are not forfeited pursuant to subsection (a), shall either (i) be
118 impounded or immobilized during the period of such person's
119 license suspension, or (ii) have an ignition interlock system
120 installed prior to the conclusion of such person's license suspen-
121 sion, which system shall not be removed for 10 years or such
122 longer period as the court may determine and shall be installed in
123 any vehicle of which such person subsequently becomes the
124 owner within such 10 year or longer period, or (iii) be subject to
125 both clauses (i) and (ii). (2) The secretary of public safety shall
126 promulgate regulations stating the method of immobilization, and
127 shall have the authority to request bids to have the service con-
128 tracted out pursuant to all laws and regulations governing state bid
129 contracts. The person shall pay the costs of storage of his vehicles
130 and for installation of the ignition interlock system; provided, that
131 no person shall be excused from the provisions of paragraph (1)
132 because of an inability to pay said costs. The court may waive
133 such costs after the person files an affidavit of indigence or
134 inability to pay with the court and the probation officer investi-
135 gates and confirms such indigence or establishes that the payment
136 of such costs would cause a grave and serious hardship to such
137 person or his family; provided, that the court shall enter a written
138 finding supporting why such costs were waived. In no case shall
139 such a determination be made by the court less than 10 days after
140 the filing of the affidavit of indigence or the disposition of the
141 case, whichever is later, in order that the probation officer may
142 properly investigate the information contained therein. Should the
143 individual cease to be indigent during the period of probation, if
144 any, the probation officer shall so notify the court who shall assess
145 the costs. In lieu of waiver of the entire amount of said costs, the
146 court may direct such individual to make partial or installment
147 payments of such costs when appropriate. Failure to pay the costs
148 required under this paragraph shall, unless excused pursuant to the
149 foregoing provisions, constitute a violation of the terms and con-
150 ditions of probation.